



POLICE DEPARTMENT

March 3, 2010

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Roger Coleman
Tax Registry No. 915466
Transit Bureau District 1
Disciplinary Case No. 85334/09

The above-named member of the Department appeared before me on November 5, 2009, charged with the following:

1. Said Sergeant Roger Coleman, assigned to Transit District #1, on or about and between August 19, 2005 and February 5, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant did register and insure a 2005 Hyundai Tucson, New York Registration #CWP-8669, at a location known to this Department, [REDACTED] when in truth and fact said Sergeant resides at a location known to the Department, [REDACTED]

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and the Respondent was represented by John D'Alessandro, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty in part.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Lieutenant Nelson Tolentino as its sole witness.

Lieutenant Nelson Tolentino

Tolentino is a 19-year member of the Department currently assigned to the Transit Bureau Investigations Unit (TBIU). He has been assigned to TBIU for the past nine years and his current assignment is as the third platoon team leader. His duties include supervising and directing investigations performed by investigators under his supervision. He testified that he has had occasion to investigate cases involving discrepancies between the address one's vehicle is registered and insured to; and the primary residence of the insured. He said that within the Police Department, this is commonly referred to as rate jumping. Tolentino testified that he has supervised approximately 15 rate jumping cases and actually investigated approximately four personally. He stated that substantiated allegations of misconduct have resulted from the investigations.

Tolentino testified that when he commences a rate jumping investigation, he initially gets the address on file with the Department for the member of the service. He then compares that address to the registration which is on file with the Department of Motor Vehicles (DMV). Tolentino said he then confers with the insurance company to make sure there are no discrepancies with the address reported to the insurance company,

the DMV and the Department.

In June 2008 Tolentino stated that he came to investigate a matter regarding the Respondent. He explained that in February 2008, the Respondent applied for a restricted parking permit through the Internal Affairs Bureau (IAB). Upon reviewing the application, IAB determined that there was a discrepancy between the address on the DMV registration and the address on file with the Department. The Department had a 128 [REDACTED] address in [REDACTED] and the Respondent's vehicle was registered and insured to [REDACTED]

[REDACTED] As a result of this investigation, Tolentino then contacted the insurance company. He explained that the insurance company is the Hartford, but the subsidiary who actually has the policy is the Sentinel. He spoke to Ron Afner.

Tolentino later received the actual policy which he reviewed [Department Exhibit (DX) 1]. He explained that he received the insurance binder for the Respondent's policy covering the period August 2005 to February 2009 which insured him in six-month increments. The Respondent was insured to the [REDACTED] address. Tolentino stated that insuring his vehicle to the [REDACTED] address rather than his primary residence in Manhattan resulted in a \$171.00 benefit to the Respondent. He said the [REDACTED] address was rated by the insurance company at \$629.00 every six months while the Manhattan address was rated at \$800.00. He testified that the Respondent saved approximately \$342.00 a year in insurance.

Tolentino testified that his next step in his investigation was to see where the vehicle was being kept. He stated that he conducted observations of the vehicle during the hours when the Respondent was not at work. He said that he conducted 20

observations and determined that the vehicle was parked in the vicinity of Transit District 1 or the Respondent's residence during the 20 observations. He explained that the Respondent's residence was the [REDACTED] address and Transit District 1 is located at [REDACTED]. He explained that those two locations were within two or three blocks of each other. After conducting these observations, Tolentino testified that he spoke with the Respondent.

During his Official Department Interview, Tolentino said that the Respondent informed him that on August 19, 2005, when he insured his vehicle he informed the insurance company that he would be using his vehicle to commute back and forth to [REDACTED]. He also informed them that the vehicle would be primarily stored at the IAB garage in uptown Manhattan which is located at 3280 Broadway. Tolentino stated that he made some follow-up calls to the insurance company and confirmed that he did, in fact, speak to the broker. However, the broker informed investigators that the Respondent stated that he insured his vehicle at the South Valley Road address in [REDACTED]. He also informed them that he had an apartment in Manhattan which he stayed at on occasion and that when he stays at that apartment, he would have the vehicle with him. Tolentino testified that this is not what he found in his case. He explained that he could not find a representative at either the Hartford or the Sentinel who could corroborate what the Respondent had said. He explained that the insurance company had the South Valley Road address as the location where the vehicle would be primarily garaged.

Based on this information, Tolentino testified that he substantiated an allegation of misconduct against the Respondent. He stated that initially the case came down as a

fraud case based on a misrepresentation as to money; but after conferring with the Legal Bureau, he was informed that the Penal Law only applies to commercial cases where there are rate differences and misrepresentations. However, it was determined that the Respondent's misrepresentation of his address to the insurance company would be substantiated as misconduct because it resulted in the benefit of \$171.00 to him every six months.

During cross-examination, Tolentino stated that these types of cases generally start with IAB. Once they are reviewed and there is a discrepancy determined in the addresses, the cases are usually sent out to the investigative units because IAB only handles corruption and serious misconduct. He denied that any of the cases originated with the insurance company. He acknowledged that the rating of the vehicle is determined by the insurance company not the Department. He agreed that insurance is based on the information provided by the customer and a determination is made as to the proper place for the vehicle to be rated. He explained that location is not necessarily the primary residence. Tolentino stated that the location is usually where the vehicle is kept. He agreed that the Department does not have a rule or regulation stating where a car should be rated by the insurance company. He also acknowledged that there is no law which prevents a person from insuring a vehicle or having an insurance company rate a vehicle at a location other than their primary residence.

A hypothetical was posed to Tolentino. He was told that a person lives in Manhattan but has a cabin in the Catskills. The person just bought a car and uses it to travel to the Catskills. He keeps the car in a garage in New York City so when he leaves New York City he can drive to the Catskills and this information is disclosed to the

insurance company. The insurance company states that they will insure the car at the location in the Catskills and rate it at that location. When asked whether there is anything illegal or improper with that, Tolentino responded, "No, except that that information would be in the policy for the vehicle." Tolentino was asked, aside from the policy, if the insurance company is made aware of the circumstances, the insurance company chooses the rate. Tolentino responded that as long as the proper disclosures were made, the insurance company makes the ultimate decision. Tolentino acknowledged that the Department has no rule or regulation preventing the insurance company from using the circumstances to determine where to rate the vehicle. Tolentino explained that the insurance company will rate the vehicle on the proper information because they too are in the business of making money and they too would not rate a car for less than what they could get.

Tolentino acknowledged that he reached out to the insurance company on three dates before he received a return phone call from a Mr. Wadell. He admitted that he informed Wadell that he believed that one of the members of the Department was defrauding the insurance company and that he needed certain paper work. He was advised by Wadell that he needed a subpoena to obtain the paper work. Tolentino said that he could not state that the company was not willing to provide the documents to him, but that he did not know what their procedure or practice was for turning over such information upon request. Tolentino agreed that on November 3, 2008 he spoke to Wadell who informed him that they did some research and that the car was mainly garaged at the house in the Hamptons. Tolentino testified that he did not actually go out to the house in the Hamptons but that he did have a field team who did. He stated that he

could not testify whether or not the house had a garage. He explained that the term, "garage" used by the insurance company meant where vehicles are kept. He stated that he based this on his understanding of how the term garage is used. Tolentino acknowledged that there are times when the insurance company uses the term garage to grant discounts to people for not parking their car on the street.

Tolentino acknowledged that he received correspondence from Wadell on December 4, 2008. He also acknowledged that Wadell stated that his company had no interest in pursuing or prosecuting the Respondent. Tolentino stated, however, that Wadell did inform him that the company would forward any information received to the underwriter who may re-rate the motorist for the proper address. When asked whether this determination would be based on Tolentino's findings or based on what the company determined, Tolentino explained that the company would re-rate the Respondent based on his findings. Then the company would take that information to the underwriter who would determine what would be the proper rate of insurance for the Respondent.

On January 2, 2009 Tolentino stated that he spoke to a different representative from the insurance company named Ron Afner. He acknowledged that the broker informed him of the Respondent's New York City address as well as his [REDACTED] address. He agreed that the broker's company was Maran Asset Company. Tolentino acknowledged that he never spoke to anyone at Maran nor did he instruct any of his subordinates to contact Maran. He admitted that during the seven-month investigation, he never spoke to the people who the Respondent purchased his insurance from. Tolentino agreed that the Respondent informed him that he owned a home in the Hamptons, that he lived in the city and the only reason he purchased a car was to get to

his place in the Hamptons. He also acknowledged that the Respondent said that he hardly ever drives in Manhattan.

When asked whether he told this information to Maran, Tolentino explained that the Respondent informed him that he told this information to the Hartford Insurance Company. He further explained that Respondent told him that he had a telephone conference with someone from the Hartford while he was at the dealership and at that time he gave that information to the Hartford representative. He acknowledged that the Respondent informed him that he deals with the Maran broker in the Hamptons.

Tolentino explained that even though the Respondent had an old car that he turned in at the dealership when he purchased the new one, he informed him [Tolentino] that when he made the changes to his insurance policy when he acquired the Hyundai, he contacted the Hartford and had a conversation via telephone while at the dealership. Tolentino further explained he had no discussion with the Respondent regarding his previous vehicle, a 1989 Chevy. He explained that his concerns were what the Respondent disclosed to the insurance company upon acquiring the 2005 Hyundai.

Tolentino acknowledged that he gave the Respondent a direct order to update the insurance policy with the proper information. When asked whether he gave the Respondent a direct order to show proof that the rating on his policy had been changed Tolentino responded, "Yes. That it had been corrected." Tolentino acknowledged that the rate change was based on his order and not something that the company did on its own volition. When asked why the Department has an interest in the rating of the insurance when the insurance company does not, Tolentino gave an explanation. He explained that once the Department grants the vehicle a parking permit, the Department

becomes attached to the vehicle and wants to ensure that there are no discrepancies with respect to that vehicle. Tolentino was asked why the Department has an interest in the case if the Respondent told Maran all the truthful information about his situation and they (Maran) made a determination as to the proper place to insure the vehicle. Tolentino responded that based on his investigation and his findings of fact, the Respondent's vehicle should have been properly rated in Manhattan. Tolentino was asked if the only reason the rating was changed was based on his direct order he responded, "Yes."

During redirect examination, Tolentino was asked what he directed the Respondent to do. He stated that he did not order the Respondent nor the insurance company to change the rate; he ordered the Respondent to properly report the information to the insurance company. He said this was based on his investigation, his surveillance of the vehicle, and his conversations with the Hartford, as well as the review of the insurance policy.

Tolentino acknowledged that in his experience, the car does not necessarily have to be registered at the person's primary residence but it does have to be rated for where the car is primarily kept and used. Based on his investigation, Tolentino stated that the Respondent primarily used and kept his car in Manhattan. Tolentino said he learned the information was changed on January 19, 2009. He said his understanding was that the Respondent provided the information to the insurance company and they made a determination as to what the rate would be. He explained that the Respondent had misrepresented information to the insurance company and received a benefit as a result. He explained that he believed the Respondent misrepresented where the vehicle was being stored overnight to obtain a favorable rating. Tolentino stated that during the

Official Department Interview, the Respondent mentioned Maran but did not say the name of his broker.

During further cross-examination, when Tolentino was asked how many times he observed the Respondent operating his vehicle within the confines of Manhattan during his seven-month investigation Tolentino replied, "Once." When asked how many times he found the vehicle parked within the confines of Manhattan, Tolentino responded, "19." Tolentino was asked whether the vehicle parked on 19 occasions and only driven once confirmed the Respondent's statement that he only used the vehicle to go the Hamptons and Tolentino replied, "Yes."

Tolentino acknowledged that no one from the insurance company informed him that the Respondent misrepresented anything. He noted that his basis for that conclusion was the computer generated records from the insurance company. Tolentino acknowledged that he has no way to determine whether what the Respondent told him was ever told to anyone at Maran or the Hartford because he could not confirm it. Tolentino admitted that he never told the Respondent to bring any documents to the Official Department Interview other than proof that his rating had been changed.

During further redirect examination, Tolentino acknowledged that there was no evidence that the Respondent ever informed the insurance company that he keeps the car split between the Hamptons and New York. He acknowledged that the only evidence he had that the Respondent told the insurance company that he was going to primarily store the car in Manhattan and use it once in awhile while out in [REDACTED] was only established from what the Respondent said. No document supported that statement. Tolentino said he reviewed the insurance policy, communicated with the insurance

representatives from the Hartford and could not corroborate the Respondent's version of what he told the insurance company. He acknowledged that the information contained in the insurance policies was contrary to what the Respondent claimed.

Upon questioning by the Court, Tolentino explained that at the top of the insurance policy, the location of the vehicle is stated as the [REDACTED] address. He acknowledged that the Respondent stated during his Official Department Interview that he uses the car in the Hamptons primarily, but he parks it in Manhattan. He further explained that on the 20 occasions the Respondent's vehicle was observed, one time he was observed operating it but the other 19 times he was either parked on the street in the vicinity of Transit District 1 or the Respondent's Manhattan residence. Tolentino stated that there was no reference to the car being parked in a garage in the insurance policy. The policy referred to the car being primarily garaged at the address shown on page 1 of the policy. He explained that that was the [REDACTED] address.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent is an over 14-year member of the Department currently assigned to Transit District 1. He explained that he worked patrol at the 30 Precinct and then was assigned to the precinct detective squad, where he made detective. He was then promoted to the rank of sergeant and transferred to the 10 Precinct in Manhattan South. He later was recruited by IAB and worked there for two years in Group 10, which was

located at 3280 Broadway. After two years and 44 days, he was then transferred to Transit District 1 where he is currently assigned. The Respondent testified that he lived his entire life at 128 [REDACTED] in New York. He stated that he also owns a summer residence in [REDACTED] on Long Island. He owns a 2005 Hyundai Tucson and prior to that he owned a 1989 Chevrolet Cavalry (Chevy). The Respondent said he has insurance with the Hartford but has never been to the Hartford. He said that the agent that he previously listed his 1989 Chevy with was Barbara Scencouski at the Maran Corporate Asset Management in South Hampton, Long Island. He explained that he used that company his entire life because that is where his family maintained their insurance.

The Respondent testified that he recalled his family using Maran back in the 1970s. He could not recall the exact date but it was a long time since he himself had been using Maran for insurance. He explained that Maran knew that he lived in the city and used his Long Island residence as his summer residence. He stated that he had conversations with them about the primary reason for him owning a vehicle, which was to get from the city to his house in the Hamptons. He stated that if he did not own a house in the Hamptons he would not own a car.

The Respondent stated that when he purchased his new car, he was at the dealer and his license plates from his Chevy were transferred to his Hyundai. The dealer made a telephone call to his insurance company and he recalled speaking to someone but he does not recall who the person was. He denied making the telephone call himself. He also denied ever speaking to Wadell or Afner. The Respondent said the information gathered by Tolentino regarding his car being garaged at the Hampton address was incorrect. He explained that there is no garage at that location, only a house. He said that there is a

circular driveway, not a garage and that the car is not kept there, it is only used there. He denied ever telling anyone at the insurance company that the car would be kept at a garage at the house in the Hamptons. The Respondent said he told Maran that he kept the car at the precinct; that he only used it to go out to the Hamptons, and the only time he drove it was when he was going out to the Hamptons. He also told them that he did not need a car in the city but he does need one in Eastern Long Island. The Respondent said the only discussion he had with the insurance company was when he was transferring his registration to the new car and he informed someone at the Hartford that he would be keeping the car at a garage in New York City. He said they verified the address and then asked him questions about how many miles he would be driving to work and other questions of that nature. He informed them that IAB had an in-ground parking location inside of a building that was secure and heated. He also informed them that the car would be stored at 3280 Broadway.

The Respondent acknowledged that the car was rated for the house at the Hamptons and he stated that he had no input as to where the car was rated. He explained that he had input on where the car is registered, but he had no input on how it was rated by the insurance company. The Respondent stated that as a result of the seven-month investigation he was not dropped from his insurance company. He was never asked to pay back premiums because of the wrong rate. The Respondent said he was instructed by Tolentino to provide proof that he changed the location of his car, the rating and that it must show that it was not insured to the South Valley Road location. He stated that he did comply with the order although he did not want to and he did provide proof that the rating was changed. The Respondent denied that his insurance company changed the

rating on their own at any point during the investigation. The Respondent explained that had he not been given a direct order, his vehicle would have remained the same in terms of where it was rated.

During cross-examination, the Respondent said that Scencouski was from Maran. When asked who his current agent was, the Respondent replied that he did not know her name, but he believed that her last name is Brown and that she was taking over the cases that Scencouski had. The Respondent acknowledged that it is a small office where he drops off his checks; and that they are familiar with who he is and what he does for a living. The Respondent explained that when he was at the dealership and spoke to the Hartford representative, he informed him that he keeps the vehicle parked at the garage at 3280 Broadway, his command. He further explained that although he spent 43 years living at the Central Park address, he used the garage at his command to park the vehicle until it was time to drive out to Long Island. The Respondent acknowledged that he stored his vehicle at the command despite not driving it to and from work. He stated that it was a requirement to park his car underground if he worked at LAB. He said it was not a requirement to own a car, but if you did own a car you had to park it in the inside garage. He further explained that there was no parking by his residence.

The Respondent testified that he did not know how the insurance company rated him, but he acknowledged that it was based on information that he provided. When asked what he specifically told the dealership regarding where the car was kept, he stated that he could not recall specifically. He basically remembered telling them that he was going to use the car on weekends and on vacations to get to and from the location. He also believed that he told them that it was going to be stored at a Manhattan facility. He

denied ever checking to see if the information he relayed was reflected in his insurance policy. When asked whether his car was rated for [REDACTED] or [REDACTED] he said that he assumed it was rated for the 3280 Broadway address since he told them that was where he was primarily keeping it. The Respondent acknowledged that it was his testimony that Maran was familiar with where he kept the car, splitting his time between [REDACTED] and New York. The Respondent said he got to work by taking the train, rollerblading, riding a bicycle or taking the bus.

The Respondent was confronted with his Official Department Interview held on January 27, 2009. He was asked whether he recalled stating that Maran never listed that he was married, or that he was a police officer, that basically he was paying the agent and it was all about commissions and they did not care. He acknowledged making that statement. He stated that the company is in the insurance business and they want to make a profit. The Respondent acknowledged that as a result of the IAB investigation, he was currently paying \$20 more a month in his insurance premiums.

The Respondent stated that Tolentino ordered him to have his insurance policy reflect the Manhattan address. He stated that Tolentino never explained to him why he needed to make the change and he informed Tolentino that he did not think he needed to make the change. The Respondent acknowledged that he primarily stores his car in Manhattan. He stated that he currently had it parked at Transit District 1. He also acknowledged that his primary residence was in [REDACTED]. He admitted that the insurance company had different information in that they listed his primary residence as [REDACTED].

The Respondent acknowledged that he was mailed his insurance premium. It

went to his [REDACTED] address and that when the policy renewed, he received it in the mail every six months. He denied going through the package. The Respondent contended that his insurance was rated properly and in his mind there was no discrepancy in the information contained in this policy.

During redirect examination, the Respondent testified that he has never read every word in his insurance policy. He stated that he is not the person who rates the insurance. He agreed if the insurance company is provided with truthful information, the company makes the determination as to where cars are to be insured. The Respondent stated that he heard testimony that [REDACTED] was listed as his primary residence. He denied that [REDACTED] was his primary residence, and he stated that he never told the insurance company that it was his primary residence. He also denied having a garage at his Hampton Bay residence.

Upon questioning by the Court, the Respondent stated that his parents purchased the [REDACTED] residence in 1968. He testified that the title is in his name because both of his parents are deceased. He said that he told the insurance company that his car is parked in New York City but he primarily parks it in [REDACTED]. He acknowledged that he thought his car was rated for 3280 Broadway because that is the location where he told the insurance company where the car would be parked.

FINDINGS AND ANALYSIS

Although there is a single Specification in this case, there are two separate charges within it. One deals with insurance and the other with registration of the Respondent's automobile.

The relevant facts are not in serious dispute. The Respondent has a primary residence in [REDACTED]. He has a secondary residence, essentially a summer residence, in [REDACTED] New York, which is in [REDACTED] [REDACTED]. He owns an automobile, specifically a 2005 Hyundai, which he insured through a broker, Maran Corporate Risk Association, Incorporated. The insurance policy itself was issued by Sentinel Insurance Company, which is part of the Hartford Insurance Company.

The Respondent credibly testified that while he is in Manhattan he uses the vehicle very little, commuting to work on foot and by other means that did not involve driving. The primary purpose for the Respondent having a car was to travel out to his home in [REDACTED] on vacations and weekends. This is supported by the investigative findings that on 19 out of the 20 occasions the car was observed by investigators, it was parked on Manhattan.

Copies of the Respondent's insurance policies for the period in question are in evidence (DX 1). This exhibit consists of seven, six-month policy renewals, beginning with one for the period July 23, 2005 to January 23, 2006 and ending with one from July 23, 2008 to January 23, 2009.

Each of the renewals is essentially the same. The forms do not purport to contain the Respondent's residence and as far as this Court can find, the word "residence" does not appear anywhere in the policy. On page one, below the Respondent's name, the

policies list "10 S VALLEY RD, [REDACTED] NY 11946" as the Respondent's *mailing address*. On the second page of each policy there is a heading, "FORMS AND ENDORSEMENTS NOW MADE PART OF THIS POLICY," followed by a list of approximately ten specific provisions. This list is followed by the following notation: "THE AUTOS DESCRIBED IN THIS POLICY ARE PRINCIPALLY GARAGED AT THE ADDRESS SHOWN ON PAGE 1."

Thus it is clear that these policies contemplate that the Respondent's Hyundai, which is the only car listed, would be principally garaged at the [REDACTED] address. It is also clear that the vehicle was principally parked on Manhattan.

The Respondent asserts that his broker, Maran, knew these facts and that therefore the insurance company was on notice of the correct information. This argument is without merit. Once the policy was placed into effect, a written document was issued and indeed that written document was reissued every six months. Each of the written documents contained the statement set forth above as to the insurer's understanding of where the car would principally be kept. It is a fundamental legal principle that the written document controls over an oral statement. This is particularly the case where the written document is repeatedly reissued giving the Respondent multiple opportunities to review the policy and correct errors therein.

The Respondent's claim is further undermined by his own testimony. He claims that he told his broker that the car was being garaged at a Department facility in Manhattan yet that address never appears in the insurance documents. Further the Respondent was transferred and ceased garaging his car at that facility but never told his broker about that change of circumstance.

It is clear that the Respondent either intentionally misled the actual insurance company, the Hartford, as to where the vehicle was to be garaged or he simply failed to correct their incorrect understanding as to where the car was garaged. In either event he received a financial benefit on his insurance rate.

Having said that, there is a problem with the language of the Specification. The sole Specification in this case states in pertinent part:

[S]aid Sergeant did register and insure a 2005 Hyundai Tucson, New York Registration [REDACTED], at a location known to this Department, [REDACTED] when in truth and fact said Sergeant resides at a location known to the Department, [REDACTED]

While the Specification refers to the Respondent's allegedly false residence in [REDACTED] the insurance policy is based on the location where the vehicle is garaged. As noted earlier there is absolutely no mention of the term "residence" in the insurance documents (DX 1) and it appears that the insurance company was not concerned about where the Respondent resided but where the vehicle they were insuring was garaged. Simply put, the charged misconduct and the contract of insurance related to that charge do not match.

However, reviewing the testimony and arguments put forward by counsel, "rate jumping" and the nature of the information provided to the insurance company regarding where the car was to be located, were the issues in dispute at trial. For instance, Respondent's counsel, in his brief opening statement said:

Very briefly what the evidence will show is that Sergeant Coleman disclosed all proper investigation to his insurance company and the insurance company made a decision as to where that car should be properly insured. That's what the evidence will show.

This same issue appeared over and over in the trial record both in the testimony of witnesses and further argument by counsel. The Respondent was on notice and well aware that the actual issue in this case was whether misinformation in his insurance policy permitted him to obtain a financial benefit to which he was not entitled had he provided the correct information or corrected the information the insurance carrier had regarding the primary location of his vehicle. If the purpose of the Specification is to provide notice of what the issue at trial is, then it is clear that the Respondent was on notice and indeed the trial record reflects that that was the issue in fact litigated.

As noted above, the Respondent either misled his actual insurance carrier, the Hartford, as to where the car would be principally garaged or simply failed to correct their misunderstanding. In either event he derived a benefit. For these reasons, the Respondent is found Guilty of that portion of the charge pertaining to insurance of his vehicle.

The Court must take note of the briefs submitted post-trial. After the conclusion of the evidence and closing arguments, the case was adjourned for decision. When the Court began to work on that decision, it realized that there were outstanding issues that needed to be researched. Along with its brief, the Department submitted an affidavit from a representative of the Hartford along with a copy of the original application made by the Respondent for his insurance policy. When the Court asked for briefs on the law it did not invite new evidence. The Court cannot accept and consider evidence after the case is closed.

While the rules of procedure in an administrative proceeding are less rigid than at a trial in State or Federal court, they are not formless. If the Department wished to have

these documents considered in evidence they should have been obtained prior to trial and offered in evidence during the proceeding, when the Respondent would have had an opportunity to review and challenge and perhaps rebut them.

The Court finds that as to the registration aspects of this Specification, the Department has failed to state a cause of action and the Court recommends that that portion of the Specification be dismissed. Tolentino testified that in his experience, a person's vehicle does not necessarily have to be registered to the primary residence, but for insurance purposes, the vehicle has to be rated for where the vehicle is primarily kept and used.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

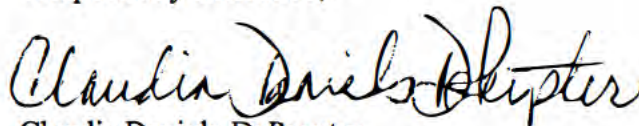
The Respondent has been found Guilty of insuring his vehicle in [REDACTED] when in truth and fact the vehicle was primarily kept in [REDACTED]. It was established through a review of the insurance records that the insurance company thought the Hyundai Tucson would be primarily garaged in [REDACTED]. Instead, based on 20 surveillances of the Respondent by the Department, the Respondent kept the vehicle in [REDACTED]. Although the Respondent stated in his Official Department Interview and during trial that he advised the insurance company that he kept the vehicle in New York City at his command parking lot on Broadway, there was no insurance paperwork

to reflect this. In addition, the Respondent received renewals for his policy every six months which did not reflect this information. Nor when he changed commands from IAB on Broadway to Transit District 1 at [REDACTED] did the policy reflect a new address. Moreover, the Respondent received a benefit for insuring his vehicle in [REDACTED] in the amount of \$342.00 each year in savings.

The Assistant Department Advocate asked for a penalty of the forfeiture of ten vacation days. I agree. The penalty should be analogous to the rate jumping cases where the Respondents insure their vehicles at locations to benefit from lower insurance premiums. In those cases, the recommended penalty is ten vacation days.

Accordingly, I recommend that the Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

JUN 21 2010



RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT ROGER COLEMAN
TAX REGISTRY NO. 915466
DISCIPLINARY CASE NO. 85334/09

In 2005, the Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluation. In 2007, he received a rating of 4.0 "Highly Competent," and in 2008 he received a rating of 3.0 "Competent." The Respondent received three Excellent Police Duty Medals in his career.

[REDACTED]
The Respondent has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner -- Trials